

REMARKS

Claim 1 is amended herein and new claim 28 is added which is directed to the subject matter of original claim 3. No new matter is presented.

Request for Reconsideration of Restriction Requirement

In the Advisory Action dated June 17, 2009, the Examiner indicated that the incorporation of the subject matter of original claim 3 was improper since this subject matter is directed to a non-elected invention. Applicants elected to prosecute the invention of Group I drawn to claims 1, 2 and 4, **with traverse**, and Applicants maintain that the restriction requirement is improper for the reasons of record, which are incorporated herein. Namely, Applicants maintain that the present claims meet the requirement of unity of invention and should be examined as an invention sharing a single inventive concept under PCT Rule 13.1 since claim 1 and new claim 28 both relate to the same or corresponding technical feature of “the combination of olanexidine and polyoxyethylene higher alkyl ethers in accordance with PCT Rule 13.2. Thus, Applicants submit that the groups of inventions are linked to form a single general inventive concept where there is a technical relationship among the inventions that involves at least one common or corresponding special technical feature.

In view of the above, and in view of the Request for Reconsideration of Restriction Requirement under 37 C.F.R. § 1.144 submitted herewith Applicants respectfully request reconsideration of the Restriction Requirement.

Response to Claim Rejection under 35 U.S.C. § 103

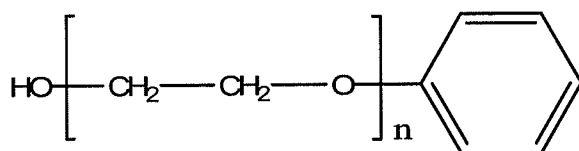
Additionally, in the Advisory Action, the Examiner indicates that the fact that Ishikawa does not recognize that olanexidine is only slightly soluble in water is irrelevant, since, according to the Examiner, the teachings of Ishikawa of a composition of olanexidine with a nonionic

surface active agent like polyoxyethylene phenylether make obvious the instant claims because the only difference is the surfactant used, i.e., polyoxyethylene phenyl ether in the Ishikawa reference and polyoxyethylene higher alkyl ether in the present application. According to the Examiner these surfactants have very similar properties, so increasing the solubility of olanexidine in water is considered an intrinsic property of these surfactants and so it was necessarily present in the prior art.

Applicants traverse the rejection for the reasons of record, which are incorporated herein. Namely, Ishikawa et al does not mention or even recognize that olanexidine or a salt thereof is only slightly soluble in water and there is no motivation that would lead one skilled in the art to increase the concentration of olanexidine or a salt thereof.

In the advisory Action, the Examiner takes the position that since the surfactant taught by Ishikawa has similar properties, it inherently increases the solubility in water of olanexidine. However, as pointed out in the Amendment filed May 29, 2009, the polyoxyethylene phenylether of Ishikawa *et al.* is different from the polyoxyethylene higher alkyl ether of the present invention in its structure.

Specifically, the structure of the polyoxyethylene phenyl ether used in Ishikawa *et al.* is shown below:



In this regard, it is clear that the polyoxyethylene phenylether of Ishikawa *et al.* is different from the polyoxyethylene higher alkyl ether and the polyoxyethylene alkylphenyl ether of formulas (1) recited in amended claim 1. Accordingly, it can not be said that the

polyoxyethylene phenylether of Ishikawa et al, having a different structure, *necessarily* increases the solubility of olanexidine or a salt thereof. Further, a person having ordinary skill in the art would not be motivated from the disclosure of Ishikawa *et al.* to increase the concentration of the solution of the olanexidine or a salt thereof using the “polyoxyethylene higher alkyl ether” of the present invention. For at least this reason the present invention is not rendered obvious by Ishikawa *et al.*

Additionally, Applicants submit that the present invention provides unexpectedly superior results. For example, the polyoxyethylene higher alkyl ether of the present invention (Examples 3 to 5) exhibits almost the same excellent anti-bactericidal activity as the polyoxyethylene alkylphenyl ether of the present invention (see Example 2) and the polyoxyethylene alkylphenyl ether of the present invention exhibits bactericidal activity remarkably superior to that of the “polyoxyethylene phenyl ether” of Ishikawa. Thus, from the data provided in the present specification, it is clear that the polyoxyethylene higher alkyl ether of the present invention has bactericidal activity superior to that of the polyoxyethylene phenyl ether of Ishikawa. For this additional reason the present invention is patentable over the prior art.

Accordingly, Applicants respectfully request withdrawal of the rejection under 35 U.S.C. §103.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the

Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

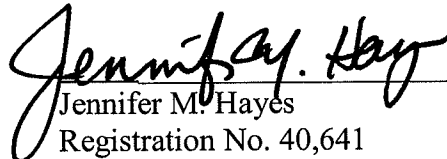
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